

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
North Carolina Department of Commerce)	File Nos. SLD-172952, 201160, 178479
Raleigh, North Carolina)	
)	
Whiteville City Schools)	
Whiteville, North Carolina)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45✓
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: October 25, 2002

Released: October 28, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration three Requests for Review filed by the North Carolina Office of Information Technology Services, Raleigh, North Carolina, on behalf of Craven Public School System (Craven County), New Bern, North Carolina, and Nash County-Rocky Mount Public School System (Nash County), Nashville, North Carolina, and a request for review by Whiteville City Schools (Whiteville), Whiteville, North Carolina.¹ Petitioners **seek** review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying the applications of Craven, Nash County, and Whiteville for discounts in Funding Year

¹ Letter from Nancy Atkins, North Carolina Office of Information Technology Services on behalf of the Craven County Public School System, to Federal Communications Commission, filed June 1, 2001; Letter from Nancy Atkins, North Carolina Office of Information Technology Services on behalf of the Nash County-Rocky Mount Public School System, to Federal Communications Commission, filed May 31, 2001; Letter from Patricia Medlin, Whiteville City Schools, to Federal Communications Commission, filed June 1, 2001 (Requests for Review). For clarity, **we** will refer to the group collectively as "Petitioners."

extends beyond that date.' The Commission set out these exemptions because it did not wish to penalize schools and libraries that had to negotiate contracts prior to the date that the universal service competitive bidding system became fully operational."

4. Petitioners filed FCC Forms 471 on behalf of Craven, Nash, and Whiteville, seeking discounts for telecommunication services in Funding Year 2000.¹¹ For all three applications, SLD denied the funding requests because the FCC Forms 471 did not meet the 28-day competitive bidding requirements.¹² Specifically, SLD explained in each Funding Commitment Decision Letter that no FCC Form 470 for the type of service requested was posted to SLD's website. SLD further explained that the FCC Form 470 cited in support of the funding requests was not posted because only Block 2, Item 7d was checked."

5. Petitioners appealed to SLD.¹⁴ In their appeals, Petitioners stated that on the FCC Form 470, they checked Block 2, Item 7d, indicating that they had a multi-year contract that was signed on or before July 10, 1997.¹⁵ Petitioners maintained that because the service agreement involved a multi-year contract, they were not required to comply with the competitive bidding

⁹ *Id.*

"See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds); *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (Nov. 2, 2000); *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

¹¹ FCC Form 471, Craven County, filed January 14, 2000; FCC Form 471, Nash County, filed January 17, 2000; FCC Form 471, Whiteville City Schools, filed January 14, 2000.

¹² Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Doug Wilkinson, North Carolina Department of Commerce, SIPS, Craven County, dated October 13, 2000; Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Jim Wright, North Carolina Department of Commerce, SIPS, Nash County, dated October 13, 2000; Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Patricia Medlin, Whiteville City Schools, dated October 13, 2000 (collectively, Funding Commitment Decision Letters).

¹³ *Id.* In Block 2 of the FCC Form 470, the applicant provides a summary of the services for which discounts are requested. By checking Block 2, Item 7d, the applicant indicates that it is requesting support for an exempt contract (*see supra*, para. 3), and SLD therefore does not post the applicant's FCC Form 470 to its website.

¹⁴ Letter from Kathryn Wilson, North Carolina Department of Commerce, SIPS, Craven County, to the Schools and Libraries Division, Universal Service Administrative Company, filed November 9, 2000 (Craven County Appeal); Letter from Kathryn Wilson, North Carolina Department of Commerce, SIPS, Nash County, to the Schools and Libraries Division, Universal Service Administrative Company, filed November 9, 2000 (Nash County Appeal); Letter from Patricia Medlin, Whiteville City Schools, to the Schools and Libraries Division, Universal Service Administrative Company, filed November 13, 2000 (Whiteville Appeal) (collectively, SLD Appeals).

¹⁵ Craven County Appeal at 2; Nash County Appeal at 2. In Whiteville's SLD Appeal, its only argument was that it had listed an incorrect FCC Form 470 Application Number on its FCC Form 471. Whiteville Appeal at 2.

7. In response, Petitioners filed the instant Requests for Review.²⁵ Petitioners explain that they received telephone service pursuant to the State Master Contract with Sprint Telecommunications, d/b/a Carolina Telephone Service, as the service provider.²⁶ Petitioners note that the service agreement with Sprint was a multi-year contract.²⁷ Petitioners indicate that as they understand the program rules, a contract signed on or before July 10, 1997 is exempt from the competitive bidding requirements for the life of the contract, citing section 54.511 of the Commission's rules in support.²⁸ Petitioners also reference the terms of the service agreement, which provide that "[T]his agreement will be automatically renewed and extended on a month to month basis from the referenced termination date unless either party gives written notice to the other of an intention to terminate the agreement."²⁹ Petitioners maintain that the month-to-month service is not a voluntary extension of the contract but **an automatic one**.³⁰ Petitioners assert that the contract has not been terminated and is still in effect from its original signing.³¹ Further, Petitioners assert that the contract has not been terminated because the competitive bidding for a new contract has not yet been completed by the State of North Carolina.³²

8. We have reviewed the record before us, and we conclude that SLD properly denied funding for part of Petitioners' applications. Petitioners are correct that a contract signed on or before July 10, 1997 is exempt from the competitive bidding requirements for the life of the contract.³³ However, Petitioners' explanation of the life of the contract is incorrect. According to the service agreement, the contract was entered into on December 18, 1996 and "end[ed]" 48 months after that date.³⁴ Provision 4(D) of the contract provides that the contract is extended on a month-to-month basis "from the referenced termination date."³⁵ Contrary to Petitioners' assertion, conversion from a fixed contract term to month-to-month service is a voluntary extension of the contract, regardless of whether such conversion occurs automatically or by

²⁵ Requests for Review.

²⁶ *Id.* at Attachment 3 (Contract with Sprint)

²⁷ *Id.*

²⁸ Requests for Review at 2. *See also* 47 C.F.R. §§ 54.511(c)(1) (providing that "a contract signed on or before July 10, 1997 is exempt from the competitive bid requirements for the life of the **contract**"), 54.511(d)(1) (stating that "the exemption from the competitive bid requirement ... shall not apply to voluntary extensions **or** renewals of the existing contracts").

²⁹ Requests for Review at 3, Attachment 3

³⁰ *Id.* at 4.

³¹ *Id.*

³² *Id.*

³³ 47 C.F.R. § 54.511(c)(i).

³⁴ Requests for Review, Attachment 3, Contract at Provision 4.

³⁵ *Id.*

request, because month-to-month status leaves the applicant free to **seek** service from another provider at the applicant's choice.³⁶ Therefore, under program **rules**, an FCC Form 470 must be filed each year for discounts on month-to-month service.³⁷ We have consistently held that month-to-month services received in one funding year cannot be supported **by** reference to a FCC Form 470 posted in a previous year.³⁸ During Funding Year 2000, Petitioners did not file an FCC Form 470 to request funding for month-to-month service. Thus, Petitioners failed to comply with our competitive bidding requirements and SLD properly denied funding beyond the period specified in Petitioners' service agreement. We therefore, affirm SLD's funding decision, and deny Petitioners' Requests for Review.

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Requests for Review filed by North Carolina Office of Information Technology Services, Raleigh, North Carolina, on behalf of Craven County Public School System on June 1, 2001, and Nash County-Rocky Mount Public School System on May 31, 2001, and the Request for Review filed by Whiteville City Schools, Whiteville, North Carolina on June 1, 2001, **ARE DENIED**.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

³⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, (1997) (Universal Service Order), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part in Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *motion for stay granted in part* (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied* (Sept. 28, 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), cert. denied in *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), cert. denied in *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), cert. dismissed in *GTE Service Corp. v. FCC*, No. 99-1249, 2000 WL 1641148 (Nov. 2, 2000) (*Universal Service Order*), para. 545 (distinguishing between extensions that are voluntary and those that a party could reject only by "breach[ing] existing contracts").

³⁷ FCC Form 470 Instructions, at 2-3

³⁸ See *Request for Review by Chickasaw Regional Library System*, *Federal-State Joint Board on Universal Service. Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-142924, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 683 (Com. Car. Bur. 2002); and *Request for Review by Dickenson County Public Schools*, *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-239477, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 9410 (Wire. Coin. Bur. 2002).

requirement.” With respect to Craven County and Nash County, Petitioners stated that although Block 2, Item 8 was not checked on its FCC Form 470, they had checked Block 3, Item 14, which clearly indicated that the funding request was for “basic telephone service only.”” Petitioners stated that on the Craven County and Nash County FCC Forms 471, they inadvertently indicated that the contract for services was awarded January 14, 2000, when Petitioners actually signed the contract in 1996.¹⁸ Petitioners further explained that they had received an FCC Form 470 Receipt Acknowledgement Letter from SLD for Craven County and Nash County but that letter did not explain “Allowable Contract Date” or “Contract Award Date.” Because of this, Petitioners argue that they used an incorrect Contract Award Date in the Craven County and Nash County FCC Forms 471.¹⁹

6 After review of Petitioners’ appeal, SLD partially funded Petitioners’ funding requests.²⁰ SLD explained that the evidence presented showed that Petitioners had signed the service agreement on December 18, 1996 for a term of four years, expiring on December 18, 2000.²¹ SLD indicated that the service agreement had an automatic renewal clause, whereby, after the contract expired, the contract became services on a month-to-month basis.²² SLD granted funding until the end of the contract, December 18, 2000.²³ However, SLD explained that Petitioners had failed to request funding for month-to-month service and had failed to provide sufficient documentation to show the existence of the contract to the end of Funding Year 2000.²⁴

¹⁶ Craven County Appeal at 2; Nash County Appeal at 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

“Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Kathryn Wilson, North Carolina Office of Information Technology Services, dated May 4, 2001 (Craven County Administrative Decision on Appeal); Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Kathryn Wilson, North Carolina Office of Information Technology Services, dated May 1, 2001 (Nash County Administrator’s Decision on Appeal); Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Patricia Medlin, Whiteville City Schools, dated May 4, 2001 (Whiteville Administrator’s Decision on Appeal) (collectively, Administrator’s Decisions on Appeal).

²¹ Craven County Administrator’s Decision on Appeal; Nash County Administrator’s Decision on Appeal. With respect to Whiteville’s appeal, SLD stated that Whiteville had not proven that a contract was signed extending services through the funding year, therefore, funding would be awarded only for the six months covered under the contract. Whiteville Administrator’s Decision at 1-2.

²² Craven County Administrator’s Decision on Appeal; Nash County Administrator’s Decision on Appeal.

²³ *Id.*

²⁴ *Id.*

2000 under the schools and libraries universal service support mechanism.' For the reasons set forth below, we deny the Petitioners' Requests for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules provide that an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.⁴ In accordance with the Commission rules, an applicant must file with SLD, for posting to its website, a FCC Form 470 requesting services.⁵ The applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant.⁶

3. Commission rules exempt contracts entered into on or prior to July 10, 1997 from competitive bidding requirements for the duration of the contract.⁷ These rules also provide that contracts signed after July 10, 1997 and before January 30, 1998 (the date on which the Schools and Libraries website was fully operational) are exempt from the competitive bidding requirement for services provided through December 31, 1998.⁸ This exemption applies only to services provided through December 31, 1998, regardless of whether the contract as a whole

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c). In prior years, Funding Year 2000 was referred to as Funding Year 3. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 2000 and ended on June 30, 2001, previously known as Funding Year 3, is now called Funding Year 2000. The funding period that began on July 1, 2001 and ended on June 30, 2002 is now known as Funding Year 2001, and so on.

47 C.F.R. §§ 54.502, 54.503

⁴ 47 C.F.R. §§ 54.504, 54.511(c).

⁵ See Instructions for Completing the Schools and Libraries Universal Service. Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470 Instructions), at 2-3.

⁶ 47 C.F.R. § 54.504(b), (c); see Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471 Instructions), at 4; see also SLD website, <<http://www.sl.universalservice.org>>.

⁷ 47 C.F.R. § 54.511(c)(1). See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rare Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-213, 95-12, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5441, para. 217 (1998) (*Fourth Reconsideration Order*). Previously, in an order released on July 10, 1997, the Commission found that only contracts signed after November 8, 1996 and prior to January 30, 1998 were exempt from the competitive bidding requirement for services provided through December 31, 1998. *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order on Reconsideration, 12 FCC Rcd 10095 (1997) (*July 10 Order*). Upon reconsideration, however, the Commission subsequently amended section 54.511(c) in order to avoid penalizing those that were uncertain of their rights prior to the release of the *July 10 Order*. *Fourth Reconsideration Order*, 13 FCC Rcd at 5445, para. 217.

⁸ *Id.*